NEOH CHOO EE & CO SDN BHD

v.

VASALAMANY GOVINDASAMY & ANOR

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ALAUDDIN MOHD SHERIFF JCA
RICHARD MALANJUM JCA
[CIVIL APPEAL NO: C-02-476-1998]
7 OCTOBER 2002

CIVIL PROCEDURE: *Appeal - Notice of appeal - Appeal from subordinate court to High Court - Whether notice of appeal must set out questions of law involved in appeal - Courts of Judicature Act 1964, ss. 3, 28 - Subordinate Courts Rules 1980, O. 49 - Rules of the High Court 1980, O. 55*

LABOUR LAW: *Employment - Wages - Claim for out-turn allowance - Whether allowance forming part of wages - Wages, definition of - Whether including all contractual payments other than those excluded by s. 2 of Employment Act 1955 - Whether workmen entitled to allowance - Employment Act 1955, s. 2, 60(1), 69*

LABOUR LAW: *Arbitration - Jurisdiction - Jurisdiction of Director General of Labour - Whether can inquire into and decide on disputes respecting wages and other payment due to employee where term of employment is governed by collective agreement - Whether jurisdiction lies with Industrial Court - Industrial Relations Act 1967, ss. 33, 56 - Employment Act 1955, ss. 2, 60(1), 69*

WORDS & PHRASES: *'Wages' - Employment Act 1955, s. 2*

Following a labour dispute that arose between the appellant and its former employees/respondents concerning the latter's entitlement to out-turn allowance, a form of payment provided under art. 14(a) of the parties' collective agreement, the Director General of Labour, adopting the respondents' argument, ruled that the allowance formed part of the respondents' wages and was thus payable to the latter. Dissatisfied, the appellant appealed. The High Court, without considering the merits thereof, dismissed the appeal on the ground that the notice of appeal was bad in law for not setting out the questions of law involved therein. It was the learned judge's view that the notice of appeal in Form 140 of the Subordinate Courts Rules 1980 ('the SCR') ought to state the relevant questions of law, bearing in mind s. 28 of the Courts of Judicature Act 1964

('the CJA'), and the authorities of *Malayan Banking Bhd v. Syed Ali Mohsin* [1991] 3 CLJ (Rep) 236 and *Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad* [1994] 2 MLJ 187. The appellant appealed further and argued that the learned judge was wrong in his conclusion, as the points of law would, in the usual way, be taken in the memorandum of appeal. The Court of Appeal, subscribing to the argument, allowed the appeal. In so allowing the appeal, the justices of appeal, upon the exceptional character of the case, and the urgency of the points of law raised, however, deemed it appropriate **not** to remit the case to the High Court (to consider the merits of the appeal before it), and so chose to hear the substantive points of appeal themselves. Upon the appellant's further argument that the out-turn allowance as contained in the collective agreement was a matter that rightly belonged within the interpretive jurisdiction of the Industrial Court under the Industrial Relations Act 1967 ('the IRA'), and not that of the Director General of Labour, issues arose before their lordships as to: (i) whether the Director General of Labour had jurisdiction to deal with the dispute aforesaid; and (ii) whether the out-turn allowance constituted "wages" within the meaning of s. 2 of the Employment Act 1955 ('the EA').

Held (dismissing the appeal)
Per Gopal Sri Ram delivering the judgment of the court:

[1] Ordinarily this appeal should be allowed and the matter remitted to the High Court to consider the appeal before it on merits. We have not, however, taken the obvious course because this was a very exceptional case and because the points of law raised would affect many employers and workmen. Whilst we would have preferred the views of the learned judge at the intermediate appellate level, following the norm would cause greater injustice and a longer delay in the resolution of the dispute. We, therefore, decided to deal with the merits and dispose of the substantive issues in the appeal. (p 331 a-c)

[2] Section 28(1) of the CJA does not say that the notice of appeal should expressly state the questions of law. Neither does O. 49 of the SCR nor O. 55 of the Rules of the High Court 1980 ('RHC'). There was thus nothing wrong with the notice of appeal lodged by the appellant with the High Court. In the circumstances, we would disagree with the learned judge that a notice of appeal in Form 140 of the SCR should set out the questions of law which the appeal involves. Points of law will normally be taken in the memorandum of appeal and it is to that document that the High Court ought to have resort. (p 330 a-c)

[3] *Malayan Banking Bhd v. Syed Ali Mohsin* and *Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad,* which in essence held that "... Form 140 must state at least in general form the question or questions of law that he wishes to appeal on" were **wrongly** decided and should no longer be considered good law. (p 330 e-i)

[4] *Uvarajah & Anor v. Penolong Pengarah Buruh Butterworth & Ors* [1992] 1 CLJ (Rep) 348 represents the correct views on the issue at hand and is binding on this court. Consequently, whilst the Industrial Court has power under s. 33 of the IRA to interpret any collective agreement, and the power to order compliance thereof under s. 56 of that Act, the jurisdiction so conferred has not been made to the exclusion of any other court or tribunal. It follows that the Director General under s. 69 of the EA has not been excluded merely because the wages of a complaining employee are provided for in a collective agreement. Indeed, under s. 69 of the EA, the Director General must necessarily interpret and enforce the terms of the collective agreement when deciding on a complaint and making an order thereunder. For these reasons the jurisdiction point here must fail. (pp 332 c-g & 333 a-e)

[5] The EA is a piece of beneficial legislation and must *ex necessitae rei* receive a liberal interpretation. If Parliament had intended to give "wages" a narrow and restrictive meaning, it would not have employed language of the width found in s. 2 of the EA. The words "in respect of contract of service" are compelling. We would therefore agree with the respondents' argument that for the purposes of the EA, wages would include all contractual payments other than those excluded by s. 2. It follows that wages in the present instance included the out-turn allowance provided under art. 14(a) of the collective agreement. (p 336 d-f)

[6] The Director General of Labour, when hearing the complaint, had referred to and applied s. 60(1) of the EA. If one looks at s. 60(1)(a) of the EA, which defines ordinary rate of pay, one would come to the conclusion, as we have, that, on the facts of the present case, the formula or methodology of calculation adopted by the Director General of Labour in the instant case was correct. We would add that s. 60(1) of the EA applies because the out-turn allowance is wages. (p 337 a-c)

*[**Bahasa Malaysia** Translation Of Headnotes*

Ekoran satu pertelingkahan buruh yang berbangkit di antara perayu dan bekas pekerja-pekerjanya/responden berkaitan keberhakan pihak yang terkemudian itu kepada elaun outturn, sejenis bayaran yang termaktub di bawah fasal 14(a) perjanjian bersama mereka, Ketua Pengarah Buruh, dalam menerimapakai hujah responden, memutuskan bahawa elaun tersebut merupakan sebahagian dari gaji responden dan dengan itu harus dibayar kepada mereka. Merasa tidak puas hati, perayu merayu. Mahkamah Tinggi, tanpa menimbang merit rayuan, menolak rayuan atas alasan bahawa notis rayuan adalah cacat di sisi undang-undang kerana tidak mengandungi isu undang-undang yang berbangkit dalam rayuan tersebut. Menurut yang arif hakim, notis rayuan di dalam Borang 140 Kaedah-Kaedah Mahkamah Rendah 1980 harus mengemukakan isu undang-undang yang berbangkit di dalam rayuan, mengambilkira s. 28 Akta Mahkamah Kehakiman 1964 ('AMK'), dan autoriti-autoriti *Malayan Banking Bhd v. Syed Ali Mohsin* [1991] 3 CLJ (Rep) 236 dan *Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan bin Ahmad* [1994] 2 MLJ 187. Perayu merayu lagi dan berhujah bahawa yang arif hakim tersilap dalam rumusannya, oleh kerana persoalan undang-undang, pada kebiasaannya, akan diolah dalam memorandum rayuan. Mahkamah Rayuan, dalam mempersetujui hujah perayu, membenarkan rayuan. Bagaimanapun, dalam membenarkan rayuan, yang arif hakim-hakim rayuan, setelah mengambilkira sifat luar biasa kes, serta peri pentingnya isu undang-undang yang berbangkit, menganggapnya perlu untuk tidak mengembalikan kes ke Mahkamah Tinggi (supaya menimbang merit rayuan di hadapannya), dan seterusnya memilih untuk mendengar sendiri isu undang-undang berkenaan. Dalam keadaan yang wujud, ekoran hujahan lanjut perayu bahawa perkara elaun outturn menurut Akta Perhubungan Perusahaan 1967 adalah termasuk dalam bidangkuasa Mahkamah Perusahaan, dan bukannya Ketua Pengarah Buruh, isu-isu telah berbangkit di hadapan yang arif hakim-hakim rayuan berkaitan: (i) sama ada Ketua Pengarah Buruh berbidangkuasa untuk mengendalikan pertelingkahan di atas; dan (ii) sama ada elaun outturn merupakan "gaji" bagi maksud s. 2 Akta Pekerjaan 1955 ('Akta Pekerjaan').

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

[1] Pada kebiasaannya rayuan harus dibenarkan dan perkara dikembalikan ke Mahkamah Tinggi untuk mahkamah tersebut mendengar rayuan di atas merit. Kami bagaimanapun tidak mengambil jalan biasa ini oleh kerana ini adalah satu kes yang luar biasa dan oleh kerana isu undang-undang yang dibangkitkan akan memberi kesan kepada ramai majikan dan pekerja.

Sementara kami sememangnya mengutamakan pandangan-pandangan yang arif hakim di rayuan peringkat pertengahan, menuruti kebiasaan akan menyebabkan ketidakadilan yang lebih besar dan kelengahan yang panjang dalam penyelesaian pertelingkahan. Kami dengan itu memutuskan untuk mendengar merit kes dan menyelesaikan sendiri isu-isu substantif dalam rayuan ini.

[2] Seksyen 28(1) AMK tidak menyatakan bahawa notis rayuan harus mengandungi persoalan undang-undang. Aturan 49 Kaedah-Kaedah Mahkamah Rendah 1980 atau A. 55 Kaedah-Kaedah Mahkamah Tinggi 1980 juga tidak menyatakan demikian. Dengan itu tidak ada cacat celanya pada notis rayuan yang difailkan di Mahkamah Tinggi. Oleh yang demikian kami tidak bersetuju dengan yang arif hakim bahawa notis rayuan dalam Borang 140 Kaedah-Kaedah Mahkamah Rendah 1980 harus mengandungi persoalan atau persoalan-persoalan undang-undang yang berbangkit dalam rayuan tersebut. Persoalan undang-undang biasanya diperturunkan dalam memorandum rayuan dan dokumen itulah yang harus dipertimbang oleh Mahkamah Tinggi.

[3] *Malayan Banking Bhd v. Syed Ali Mohsin* dan *Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad,* yang pada intinya menyatakan bahawa "... Borang 140 hendaklah menyatakan secara umum persoalan atau persoalan-persoalan undang-undang yang ingin dirayui itu" adalah merupakan keputusan yang salah dan tidak lagi boleh dianggap sebagai undang-undang yang terpakai.

[4] *Uvarajah & Anor v. Penolong Pengarah Buruh Butterworth & Ors* [1992] 1 CLJ (Rep) 348 mewakili pandangan yang betul berkaitan isu semasa dan ianya mengikat mahkamah ini. Ianya mengikut bahawa, sementara Mahkamah Perusahaan mempunyai kuasa di bawah s. 33 Akta Perhubungan Perusahaan 1967 untuk mentafsir mana-mana perjanjian bersama, serta kuasa untuk memerintahkan pematuhan kepadanya di bawah s. 56 Akta tersebut, bidangkuasa yang diberi tidaklah sampai ke tahap menyingkir mahkamah atau tribunal lain. Oleh yang demikian, Ketua Pengarah di bawah s. 69 Akta Pekerjaan tidaklah menjadi tersingkir cuma kerana gaji pekerja yang mengadu itu termaktub dalam perjanjian bersama. Malahan, di bawah s. 69, Ketua Pengarah berkewajipan untuk mentafsir dan melaksanakan terma-terma perjanjian bersama apabila memutuskan tentang aduan dan membuat perintah di bawahnya. Atas alasan-alasan ini, persoalan bidangkuasa yang dibangkitkan semestinyalah gagal.

[5] Akta Pekerjaan adalah satu perundangan kebajikan dan hendaklah *ex necessitae rei* diberikan tafsiran yang liberal. Jika Parlimen berniat untuk memberikan maksud yang sempit dan terbatas kepada perkataan "gaji", ia tidak akan menggunakan perbahasaan selebar yang terdapat pada s. 2 Akta tersebut. Perkataan-perkataan "in respect of contract of service" adalah amat tegas. Kami dengan itu bersetuju dengan hujah responden bahawa untuk maksud Akta Pekerjaan, gaji adalah merangkumi semua bayaran kontraktual selain dari yang disisihkan oleh s. 2. Oleh itu gaji dalam kes semasa termasuk elaun outturn yang termaktub pada fasal 14(a) perjanjian bersama.

[6] Ketua Pengarah Buruh, apabila mendengar aduan, telah merujuk kepada dan menggunapakai s. 60(1) Akta Pekerjaan. Jika kita melihat kepada s. 60(1)(a), yang mentafsir kadar bayaran biasa, kita akan membuat rumusan, sebagaimana yang kami buat, bahawa, berdasarkan fakta kes semasa, formula atau methodologi yang digunapakai oleh Ketua Pengarah Buruh di sini adalah betul. Kami menambah bahawa s. 60(1) terpakai oleh kerana elaun outturn adalah merupakan gaji.

Case(s) referred to:

Asia Motor Co (KL) Sdn Bhd v. Ram Raj & Anor [1985] 2 MLJ 202 ***(refd)***

Associated Concrete Products (M) Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employees' Union [1998] 1 ILR 79 ***(refd)***

Malayan Banking Bhd v. Syed Ali Mohsin [1991] 3 CLJ 2892; [1991] 3 CLJ (Rep) 236 HC ***(ovrd)***

Metal Box Malaysia Bhd v. Metal Industry Employees' Union [1982] 1 MLLR 210 ***(refd)***

Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad (An Infant) [1994] 2 MLJ 187 ***(ovrd)***

Petaling Rubber Estate Ltd & Anor v. Nadarajah & Ors [1987] 2 CLJ 296; [1987] CLJ (Rep) 279 SC ***(refd)***

Uvarajah & Anor v. Penolong Pengarah Buruh, Butterworth & Ors [1992] 3 CLJ 1353; [1992] 1 CLJ (Rep) 348 SC ***(foll)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 28(1)
Employment Act 1955, ss. 2, 69
Industrial Relations Act 1967, ss. 16, 17(2)
Rules of the High Court 1980, O. 55
Subordinate Courts Rules 1980, O. 49
Wages Councils Act 1947, s. 15(1)
Wages Regulations (Shop Assistants) Order 1970, O. (4)(i)

For the appellant - A Suppiah; M/s Presgrave & Matthews
For the respondents - Mohideen Abdul Kader (Theivanai A); M/s Mohideen & Partners

[Appeal from High Court, Temerluh; Civil Appeal No: 16-5-94]

Reported by Gan Peng Chiang

JUDGMENT
(Oral)

Gopal Sri Ram JCA:
This is the judgment of the court.

The appellant before us is the owner of a rubber estate. The two respondents are its former employees. By a Collective Agreement which by its terms was deemed to take effect from 1 December 1990 made between the appellant and the National Union of Plantation Workers of which the respondents are members, the terms and conditions of employment of the appellant's employees were negotiated and settled. That Collective Agreement was taken cognizance of by the Industrial Court under s. 16 of the Industrial Relations Act 1967. Accordingly, the terms set out in the Collective Agreement became implied terms in the contract of service that existed between the appellant and the respondents. This is as a result of s. 17(2) Industrial Relations Act 1967 which reads as follows:

> 17(2) As from such date and for such period as may be specified in the Collective Agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement or a decision of the Court.

One of the terms of the Collective Agreement concerns the payment of an outturn allowance. It appears under art. 14 of the Collective Agreement. For reasons which will become obvious later in this judgment a re-production of the whole of art. 14 is necessary. This is what that article says:

a **Article 14 - Rates of Pay for Rubber Tappers**

For carrying out the duties of tappers in their respective standard task size as set out in Article 13 above all tappers shall be remunerated as below:

b Price Zone in Kilo	160-180 (incl.)	Above 180-190 (incl.)	Above 190-200 (incl.)	Above 200-220 (incl.)	Above 220-240 (incl.)	Above 240-260 (incl.)	Above 260-280 (incl.)	Above 280-300 (incl.)
c Basic Wage (in Ringgit)	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70
Price Bonus	Nil	0.40	0.60	0.80	1.00	1.20	1.40	1.60
d Basic Weight (in kg.)								
H/Y	11	11	11	11	11	11	11	11
L/Y	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5
e Scrap Rate (in sen per kg.) (wet)	14	16	17	17	17	17	17	17

f (a) An outturn allowance of $65.00 shall be payable to all employees who perform work on all normal working days on every month. For each day of absence without reasonable excuse or cause the estate shall reduce the said sum by $13.00 for each day of such absence.

(b) **Non-applicability of the provision of this Agreement**

g Should the price of rubber fall below 160 sen per kg. for any three (3) successive months, the wage rates provisions relating to tappers shall be deemed to be inoperative so long as the price of rubber remains below 160 sen per kg. Wages payable during such period shall be determined by the parties to this Agreement.

h (c) For every 20 sen increase in the price of rubber above the price zone of 280-300 sen, an additional price bonus of 20 sen per day worked shall be paid for each such increase in the price zone.

i

Subsequently a dispute arose between the appellant and the respondents about the payment of outturn allowance. The dispute centred on the calculation of outturn allowance for all days in a month including public holidays. The appellant's contention was that "outturn allowance" is a discretionary payment provided as an incentive only. It is not part of wages. If a worker does not come to work then in accordance with art. 14(a) of the Collective Agreement he or she will lose RM13 per day of absence.

The respondents took a much wider position. They took and continue to take the stand that in calculating the rate of pay outturn allowance should be taken into account. They accordingly wanted the payment made to them on that basis. The appellant declined. So the respondents took their complaints before the Director General of Labour. He held an enquiry and came to the conclusion that the respondents were right in their contention. He ordered payment of RM1,716.96 (see p. 148 of the record of appeal). The appellant being dissatisfied, gave notice of appeal to the High Court. For the purposes of such an appeal, the Director-General of Labour is treated as a subordinate court by virtue of s. 3 of the Courts of Judicature Act 1964 read together with s. 28 of that Act.

The appeal was heard at the Temerloh High Court. Both sides put in written submissions. The learned judge took time for consideration. While considering the arguments, a point occurred to him. It was a procedural point. He asked the parties to file further written submissions addressing that point. They did so. The point is a short one. It is, whether a notice of appeal from a subordinate court should set out the questions of law which the appeal involves. The judge came to the conclusion that on a proper construction of s. 28 the notice of appeal should be so expressed. He found the appellant's notice of appeal defective in that respect. So he dismissed the appeal without going into the merits. The appellant has therefore appealed to us. This appeal is therefore entirely procedural in nature. The issue is whether a notice of appeal from the subordinate court should formulate the questions of law upon which the appeal turns.

Section 28(1) after its amendment reads as follows:

> 28(1). Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

The section does not say that the notice of appeal should expressly state the questions of law. Neither does O. 49 of the Subordinate Court Rules 1980 nor O. 55 of the Rules of High Court 1980. We therefore find that there is nothing wrong with the notice of appeal lodged by the appellant with the High Court. It conforms with the statutory form provided by the rules of court. It has not prejudiced the respondents in any way. Indeed they made no complaint about it in the first place. It was the High Court which took the point *suo motu.* That shows there was no prejudice. If there had been, counsel for the respondents would surely have complained. We are therefore, with respect, unable to agree with the learned judge that a notice of appeal in Form 140 of Subordinate Court Rules 1980 should set out the question or questions of law which the appeal involves. We agree with Mr. A. Suppiah of counsel for appellant that points of law will in the usual way be taken in the memorandum of appeal and it is to that document that the High Court ought to have resort. If upon reading the memorandum of appeal and the record of appeal as a whole the High Court comes to the conclusion that the appeal does not involve a question of law, then it would no doubt deal with the point in the ordinary way, when the appeal is called on for hearing.

But it must be said at once in fairness to the learned judge that he was persuaded to take the view he took by two decisions of the High Court. In *Malayan Banking Bhd. v. Syed Ali bin Mohsin* [1991] 3 CLJ 2892; [1991] 3 CLJ (Rep) 236, Lamin Yunus J (as he then was) said:

> I am of the view that in the case of an appellant intending to appeal on questions of law, the notice of appeal in Form 140, must state at least in general form the question or questions of law that he wishes to appeal on.

Again in *Mohamad Safuan bin Wasidin & Anor v. Mohd. Ridhuan bin Ahmad (An Infant)* [1994] 2 MLJ 187, Abdul Malik Ishak J expressed the following view:

> In my judgment, in the case of an appellant intending to appeal from the decision of the subordinate court where the quantum is less than RM10,000.00, the notice of appeal in Form 140 must state generally the question or questions of law that he wishes to appeal on. Any failure to conform to this basic statutory requirement would strike at the very core of the appeal and, consequently, would nullify the appeal.

Now it is plain that the views expressed in those two cases do not coincide with the opinion we have expressed a moment ago. In our opinion those cases were wrongly decided and should no longer be considered good law. For otherwise, the court would be imposing a condition of appeal that written law does not prescribe.

Ordinarily therefore this appeal should be allowed and the matter remitted to the High Court to consider the appeal before it on merits. However, we have this morning permitted counsel on both sides to address us on the merits. We have not taken the obvious course of sending the case back. We have not done so because this is a very exceptional case. The amount involved is infinitesimal. It is a pittance. Yet the points of law raised affect many employers and workmen. Of course in the usual way we would have preferred to have before us the views of the learned judge at the intermediate appellate level. But, as we have said, this is a very exceptional case. Following the norm would, in our opinion cause greater injustice and long delay in the resolution of this dispute. Both the appellant employer and the respondent workmen are anxious to have an early result which a remission of the case will not produce. So we have decided to deal with the merits and dispose of the substantive issues that arise in the appeal. But we would caution that this judgment should not be treated as a precedent for future use upon the methodology that we have adopted.

The merits give rise to two issues. We will formulate them in terms of two questions. The first is whether the Director General of Labour has jurisdiction to deal with the dispute. The second, is whether the outturn allowance is "wages" within the meaning of that term in s. 2 of the Employment Act 1955 ("the Act").

Mr. Suppiah for the appellant says that the Director-General of Labour had no jurisdiction. According to counsel the outturn allowance provision is contained in the Collective Agreement and is therefore a matter which rightly belongs within the interpretive jurisdiction of the Industrial Court under the Industrial Relations Act 1967. It is not something that the Director-General is competent to pronounce upon. Our attention was drawn to s. 69 of the Act which provides, so far as is relevant to this appeal, as follows:

> 69(1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under:
>
> (a) any term of the contract of service between such employee and his employer;
>
> (b) any of the provisions of this Act or any subsidiary legislation made thereunder; or
>
> (c) the provisions of the Wages Council Act, 1947 or any order made thereunder,

> and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.

Mr. Suppiah says that in accordance with the terms of the above quoted section, there is no power in the Director-General to interpret the Collective Agreement, in particular art. 14(a), to determine whether the outturn allowance is wages or not.

In response, Mr. Mohideen, for the respondents, in a carefully formulated argument disagrees with Mr. Suppiah's contention. He says that the weight of authority favours the respondent. He has referred us to *Uvarajah & Anor v. Penolong Pengarah Buruh, Butterworth & Ors* [1992] 3 CLJ 1353; [1992] 1 CLJ (Rep) 348. That was a case in which the main issue was whether the Director-General of Labour had jurisdiction under s. 69 of the Act to inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee where the terms of employment are governed by a collective agreement which has been taken cognizance of by the Industrial Court.

In other words, it is the identical issue that has arisen before us this morning in this appeal. And upon that issue, the Supreme Court speaking through Harun Hashim SCJ had this to say:

> The Industrial Court has the power under s. 33 of the Industrial Relations Act 1967 to interpret any collective agreement, and the power to order any party to comply with any term of a collective agreement under s. 56 of the Industrial Relations Act 1967, but the jurisdiction conferred on the Industrial Court under these two sections has not been made to the exclusion of any other court or tribunal. If the legislature had intended it to be otherwise, it would have said so expressly as it does eg, in Art 128 of the Federal Constitution: 'The Supreme Court shall, to the exclusion of any other court, have jurisdiction ...'. Again s. 69A of the Act provides:
>
> > Notwithstanding section 69, the Director General shall not inquire into, hear, decide or make any order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967:
> >
> > (a) has been referred to, or is pending in any proceedings, before, the Industrial Court; or
> >
> > (b) is pending in any inquiry or any proceedings under this Act.

which clearly illustrates that the jurisdiction of the Director General of Labour under s. 69 has not been excluded merely because the wages of a complaining employee are provided for in a collective agreement. Indeed, the Director-General under s. 69 must necessarily interpret and enforce the terms of the collective agreement when deciding on a complaint and making an order thereunder. What s. 69A seeks to do is to avoid duplicity of proceedings. By the same token we hold that the only exclusion of the Director General's powers under s. 69 *vis-a-vis* the Industrial Court is if the claim or dispute has been referred to or is pending before the Industrial Court.

Mr. Mohideen says that those views are binding on us. We agree. We would add that those views are correct. It follows accordingly that the jurisdiction point taken by Mr. Suppiah is without merit.

This case came before the Director-General of Labour as a claim for a contractual payment which he allowed. The respondents represented themselves. In their station of life, being mere rubber tappers, they cannot be expected to have mastered the niceties of the law governing jurisdiction of the Director General of Labour. If the appellant thought that this was a case which ought properly go to Industrial Court, they should have taken the necessary steps themselves. In any event, even if they had taken a jurisdictional challenge, we are of the view that the challenge would have failed by reason of the decision in *Uvarajah (ibid)*. For these reasons, the jurisdiction point fails.

We now turn to consider the substantive point. Is the outturn allowance wages? Mr. Suppiah says it is not; Mr. Mohideen says it is. For the purpose of resolving this conflict between the parties, we must hearken to s. 2 of the Act which defines wages as follows:

'wages' means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of services but does not include

(a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance or of any approved amenity or approved service;

(b) Any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;

(c) Any travelling allowance or the value of any travelling concession;

(d) Any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;

(e) Any gratuity payable on discharge or retirement; or

(f) Any annual bonus or any part of any annual bonus.

In support of his argument that outturn allowance does not come within the definition of wages, Mr. Suppiah has relied on several awards of the Industrial Court to show that discretionary payments do not come within that definition. We trust that we will be forgiven if we do not go through all the cases referred to us by learned counsel. Suffice that we make reference to *Asia Motor Co. (KL) Sdn. Bhd. v. Ram Raj & Anor* [1985] 2 MLJ 202, where at p. 205, Salleh Abas LP said this:

> SRA, ASRA, commission and bonus are not amongst items nor are they amongst the items of authorized deductions. According to Encik C.V. Das' submission they must therefore be treated as part of remuneration or wages. With respect we are not able to agree with the submission. They are not, and indeed cannot be authorized deductions because they do not represent an employee's obligation which he must pay by way of deduction from his wages or remuneration. They are, however, additional obligations which an employer has to pay his employee. By their jurisdictional nature they should be included among the excluded items. The fact that they are not so included does not mean that an employer can no more agree to pay additional items to his employee. To hold that they are part of the wages or remuneration is absurd because it inhibits an employer from agreeing to make additional payment over and above wages or remuneration. Surely, this is not intended by W.C.A. In our opinion the list of excluded items is not closed. There is nothing in W.C.A. or E.A. to present an employer from agreeing to pay his employee sums other than those excluded without treating them as wages or remuneration.

The facts of Asia Motor are materially different from those of the present appeal. That was a case in which the workmen who were sales representatives employed by the appellants claimed that they were paid less than the statutory minimum remuneration under O. (4)(i) of the Wages Regulations (Shop Assistants) Order 1970. Those workmen complained to the Director General of Labour resulting in an enquiry at the conclusion of which they were awarded certain sums of money. Asia Motor Co. being dissatisfied appealed to the High Court, which dismissed the appeal. The Supreme Court granted leave, but after hearing arguments, dismissed the substantive appeal. Two main issues arose for decision before the Supreme Court. The first was whether O. (4)(i) of the Wages Regulations (Shop Assistants) Order 1970 was *ultra vires* s. 15(1) of the Wages Councils Act. The other issue was whether the Director-General of Labour had jurisdiction to entertain the claim. Both issues were resolved against the appellants, Asia Motor Co. It is in the course of deciding these points that

the learned Lord President made the observations in the above quoted passage. His views are therefore entirely *obiter dicta*. They are of course of persuasive authority, and we would have been inclined to be persuaded by them, but for the presence of clear authority on the specific point going in the opposite direction.

Mr. Mohideen in the course of his reply, submitted that the outturn allowance was part of wages because it was a contractual payment. The parties to the Collective Agreement namely the employer and the Union had agreed upon it. It was a term of the contract of service between the appellant and the respondents under s. 17(2) of the Industrial Relations Act 1967, as observed very early in this judgment. Since they are contractual payments, Mr. Mohideen argues, they are wages. In support of this argument, Mr. Mohideen has referred us to a number of decisions. We find it necessary to refer to two of them. The first is *Petaling Rubber Estate Ltd. & Anor v. Nadarajah & 164 Others* [1987] 2 CLJ 296; [1987] CLJ (Rep) 279 where Hashim Yeop A. Sani SCJ (later CJ of Malaya) said:

> Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages. In other words unless the parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character ie, payable over and above wages. In the instant case the evidence shows that it is payable not for work done but payable only after a normal day's work has been completed by the employee.

Mr. Mohideen says that although that case concerned the payment of special relief allowance, the proposition in the above quoted passage is of universal application. We agree. The special relief allowance was disallowed there because it was not a contractual payment. What comes across clearly through from the judgment of the learned Chief Justice of Malaya is that if it had been in the agreement, then the respondents in that case would have been entitled to it.

The other case is an award of the Industrial Court in *Associated Concrete Products (M) Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees' Union* [1998] 1 ILR 79 where the following views of Harun Hashim, J President of the Industrial Court in *Metal Box Malaysia Bhd. v. Metal Industry Employees' Union* [1982] 1 MLLR 210 were quoted:

> The definition of wages in the Act gives the key to the answer to the question before us. The net has been cast far and wide. When it is drawn, the law says you take everything you find in it except for certain specific items which have to be thrown away. The words used in the definition are clear. It says all remuneration which is payable to an employee for work done in respect of his contract of service.
>
> The Employment Act is not concerned with what label the payment is made, so long as it is payable for work done.
>
> The only payments that are excluded are payments specifically excluded by the definition of wages. It follows that what is not excluded is included.

The foregoing view we find to be in tandem with those expressed by the Supreme Court in *Petaling Rubber Estate Ltd. & Anor (supra)*. We accordingly decline to apply the *obiter dicta* of the learned Lord President in *Asia Motor Co.*

We will now give our reasons for the view we take. The Act, like the Industrial Relations Act 1967, is a piece of beneficial social legislation by which Parliament intends the prevention and peaceful and speedy resolution of disputes between employers and their workmen. In other words the object is to promote industrial harmony. The Act is therefore legislation which ex necessitae rei must receive a liberal interpretation. By contrast, the learned Lord President in *Asia Motor Co.* adopted a literal and strict construction and approach wholly unsuitable for socio-economic legislation. Further, we find the views expressed by Harun Hashim J (while sitting as the President of the Industrial Court) in the passage averted to a moment ago to accord with the spirit and intendment of the Act. If Parliament had intended to give "wages" a narrow and restrictive meaning, it would not have employed language of the width found in s. 2. The words "in respect of contract of service" are compelling. We therefore agree with Mr. Mohideen's argument that for the purposes of the Act, wages include all contractual payments other than those excluded by s. 2.

It follows as the next step of the logical process, that the appellant's argument fails. On the facts of this case we are satisfied that wages in the present instance includes the outturn allowance provided under art. 14(a) of the collective agreement.

There remains one other point for disposal. It is the appellant's complaint of the methodology of calculation contended by the respondents and accepted by the Director General. Mr. Mohideen has provided a complete answer to the submission of the appellant. He has drawn our attention to s. 60(1) of the Act. In summary what that section does is to define and explain the expression "ordinary rate of pay". In so explaining, it provides for a formula which is to

be applied in three different situations: where the wage is paid monthly, weekly or daily, as the case may be. From the record provided, it is clear that the Director General of Labour who heard the complaint, referred to and applied s. 60(1). If one looks at s. 60(1)(a) which defines ordinary rate of pay, one will come to the conclusion, as we have, that on the facts of the present case the formula adopted by the Director General of Labour in the instant case is correct. He has merely worked out as a matter of pure arithmetical calculation what the respondents should "receive under the terms of his contract of service for the normal hours of work for one day." At the risk of repetition we say that s. 60(1) applies because the outturn allowance is wages.

We have carefully considered all the criticisms made against the findings of the Director-General of Labour. We find no merit in any of them.

The upshot is that the appeal fails. Before concluding, we must express our gratitude to counsel on both sides for their careful and well-researched arguments. It would not we think be out of place to make special mention of Mr. A. Suppiah's presentation of his case. When he first commenced his argument, we thought the summary dismissal of his appeal was warranted. However, through persuasive argument, he convinced us that we ought not to dismiss this appeal out of hand but go into the merits. But for his efforts, this judgment would not have been produced.

I would now call on my learned brother Alauddin bin Dato' Mohd Sheriff JCA to deliver the formal order.

Alauddin Mohd Sheriff JCA:
The appeal is dismissed with costs to be taxed accordingly and deposit to be refunded to the appellants.